

Amendment No. 2 to HB2919

Hargrove
Signature of Sponsor

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Date _____

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Comm. Amdt. _____

AMEND Senate Bill No. 2627*

House Bill No. 2919

by deleting all language after the enacting clause and substituting the following:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 104, is amended by adding the following as a new part:

68-104-201. The purpose of this part is to enact a self-funded licensing program for display fireworks, pyrotechnic, and flame effect exhibitors and a certification program for individuals conducting fireworks displays, proximate pyrotechnic displays, and flame effect displays. The purpose of these programs is to ensure a level of competence that promotes the safety of the viewing public as well as the safety of fire service personnel, fireworks display operators and proximate pyrotechnic display operators as well as employees, performers, and support personnel. It is not the purpose of this part to regulate Class C common fireworks (1.4G consumer fireworks as designated in division 1.4, Title 49, Code of Federal Regulations § 173.52) or consumer fireworks as described by National Fire Protection Association (N.F.P.A.) standards.

68-104-202.

(a) The following definitions apply in the interpretation of this part unless the context indicates otherwise:

(1) "Certified outdoor display operator" means an individual who by experience, training, and examination recognized and approved by the state fire marshal has demonstrated the necessary knowledge and ability for safely assembling, discharging, and supervising of outdoor displays of display fireworks in accordance with N.F.P.A. 1123.

(2) “Certified flame effect operator” means an individual who by experience, training, and examination recognized and approved by the state fire marshal has demonstrated the necessary knowledge and ability for safely assembling, discharging, and supervising flame effects in accordance with this Part and current N.F.P.A. 160.

(3) “Certified proximate pyrotechnic operator” means an individual who by experience, training, and examination recognized and approved by the state fire marshal has demonstrated the necessary knowledge and ability for safely assembling, discharging, and supervising indoor pyrotechnics, indoor pyrotechnic materials used outdoors, or proximate displays of 1.4G or 1.4S fireworks or pyrotechnics in accordance with N.F.P.A. 1126.

(4) “Display fireworks” means 1.3G fireworks (formerly D.O.T. Class B) consistent with regulations of the U. S. Department of Transportation in division 1.3 in Title 49, Code of Federal Regulations, subject to N.F.P.A. 1123 requirements, and designed primarily to produce visible or audible effects by combustion, deflagration, or detonation.

(5) “Event” means any function or gathering at which there will be a fireworks display and/or pyrotechnic display and/or flame effect display. If a function or gathering lasts more than one (1) day, each day is a separate event. “Event” does not include any function or gathering at which Class C consumer or common or 1.4G fireworks will be used.

(6) “Fire marshal” means the state fire marshal.

(7) “Flame effect” means the combustion of an inflammable solid, liquid, or gas to produce thermal, physical, visual, or audible phenomena before an audience as defined by current N.F.P.A. 160 requirements and standards regulating these effects.

(8) “Flame effect display” means the use of flame effects before an audience as defined by and subject to current N.F.P.A. 160 requirements.

(9) “Licensed exhibitor” means a sole proprietor, partnership, corporation, company, firm, or other entity licensed under this part to perform or provide firework or pyrotechnic materials for outdoor fireworks displays and/or proximate pyrotechnic displays and/or flame effect displays.

(10) “Outdoor fireworks display” means a presentation of display fireworks for a public or private gathering as defined by and subject to current N.F.P.A. 1123.

(11) “Proximate pyrotechnics” means pyrotechnic devices for professional use only, used outdoors or indoors, and as defined by and subject to N.F.P.A. 1126 as 1.4G or 1.4S fireworks or pyrotechnics. They are similar to consumer fireworks in chemical composition and construction but not intended for consumer use.

(12) “Proximate pyrotechnic display” means the use of pyrotechnic devices and materials, 1.4G or 1.4S fireworks or pyrotechnics when any portion of the audience is closer than permitted by current N.F.P.A. 1123, and subject to current N.F.P.A. 1126 requirements.

(13) "Sponsor" means any person or organization that contracts with a licensed exhibitor or certified operator to perform a fireworks display and/or proximate pyrotechnic display and/or flame effect display.

(b) References to N.F.P.A. provisions in this part mean the currently effective edition of the provision and any amendments or supplements to the provision adopted by rule of the fire marshal, and any subsequent edition of the provision adopted by the fire marshal by rule that supersedes a previous edition.

68-104-203. An individual or entity must be a licensed exhibitor to perform or provide an outdoor fireworks display, indoor or outdoor proximate pyrotechnic display, or an indoor or outdoor display using flame effects, or to supply display fireworks, indoor or outdoor proximate pyrotechnics, or flame effect materials for display purposes.

68-104-204. To receive an exhibitor's license, an applicant must:

(1) Make application to the fire marshal on a form prescribed by the fire marshal. The application must be accompanied by the required fee. An individual seeking a license as a sole proprietor or on behalf of a business entity must be at least twenty-one years of age and not have been convicted of or pleaded guilty or nolo contendere to any state or federal felony. In the case of a business entity seeking a license, no officer or member of its governing board may have been convicted of or pleaded guilty or nolo contendere to any state or federal felony.

(2) Submit a certificate of insurance naming the fire marshal as certificate holder and evidence that the applicant has and will continue in force a general liability insurance policy, on an event, multiple event, or continuous basis, to cover its potential liability for bodily injury and property damage in the minimum amount of one million dollars

(\$1,000,000) during all fireworks, pyrotechnic, and flame effect displays for the use and benefit of any person who may be injured or aggrieved. The certificate of insurance or other evidence must be issued by an insurer authorized to do business in this state. If the insurance policy ceases to be in effect, the exhibitor's license becomes invalid. This section does not require employees or certified operators to maintain this insurance coverage.

68-104-205. If an applicant complies with the requirements of this part and the rules of the fire marshal, the fire marshal shall issue the license within sixty (60) days of receiving the satisfactorily completed application. The term of the license is one (1) year from the date of issuance. Each license issued must contain a distinct number assigned to the particular exhibitor. The fire marshal shall maintain a list of all licensed exhibitors. In this list next to the exhibitor's name, the fire marshal shall insert the period of licensure and the exhibitor's license number. The list of licensed exhibitors shall be posted on the department's website.

68-104-206. A license holder with an unexpired license may renew the license at any time before the license expires. An exhibitor whose license has been expired for ninety (90) or fewer days may renew the license and have it retroactive to the date the old license expired by applying and paying a fee equal to one and one-half (1 ½) times the normal fee. This section does not prevent the fire marshal from denying a renewal license if the applicant does not comply with this part or rules of the fire marshal.

68-104-207.

(a) The fire marshal may refuse to grant, or may suspend, revoke, or refuse to renew any license or certification held under the provisions of this chapter, and may assess a civil penalty not exceeding ten thousand

dollars (\$10,000) for each violation of this chapter or rules promulgated under it.

(b) The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, govern all matters and procedures respecting the hearing and judicial review of any contested case arising under this chapter.

(c) If an exhibitor's license is suspended or revoked, then the exhibitor shall cease performing displays and distributing display fireworks immediately. If an exhibitor's license is revoked for any reason, then the exhibitor is prohibited from applying for a new license for one (1) year from the date of revocation. Upon a finding that the exhibitor's federal license, if applicable, has been revoked, the fire marshal shall revoke the exhibitor's state license. An exhibitor's license that has been revoked solely for failure to have the required insurance may be reinstated upon proof by the exhibitor that the required insurance has been obtained.

68-104-208.

(a) The fire marshal shall establish a program of certification for outdoor fireworks display operators, proximate pyrotechnic display operators, and flame effect display operators. In general, to receive certification, an individual must apply for certification to the fire marshal on a form to be prescribed by the fire marshal, must be at least twenty-one years of age, must not have been convicted of or pleaded guilty or nolo contendere to any state or federal felony, and must provide written documentation affirming active participation in at least three (3) displays in each area in which certification is desired in the three (3) years immediately preceding the application. In addition, an individual must

meet the following requirements for the area(s) in which he/she desires certification:

(1) To be certified as an outdoor fireworks display operator, the individual must pass a written examination that tests outdoor display operator knowledge, approved by and conducted under the auspices of the fire marshal, and pay a certification fee not to exceed one hundred fifty dollars (\$150) to be set by rule by the fire marshal.

(2) To be certified as a proximate pyrotechnic display operator, the individual must pass a written examination that tests pyrotechnic special effects operator knowledge, approved by and conducted under the auspices of the fire marshal, and pay a certification fee not to exceed one hundred fifty dollars (\$150) to be set by rule by the fire marshal.

(3) To be certified as a flame effect display operator, the individual must pass a written examination that tests flame effect operator knowledge, approved by and conducted under the auspices of the fire marshal, and pay a certification fee not to exceed one hundred fifty dollars (\$150) to be set by rule by the fire marshal.

(b) If an applicant applies for more than one (1) certification he or she may take the test for any or all certifications and pay a maximum certification fee of three hundred dollars (\$300).

(c) The fire marshal shall establish the scope and type of examinations required by this section, such as a test created by a nationally recognized pyrotechnic association. The fire marshal may administer the examination or may enter into an agreement with a testing service or organization. The tests may be administered at a specific

location or time. The fire marshal may set by rule and collect a reasonable nonrefundable fee calculated to cover the costs of administering the test. Written tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's skill and ability. The content, type, frequency, and location of the tests shall be designated by the fire marshal.

(d) An operator certification or renewal expires two (2) years after the date of approval or reissuance. To renew the certification, an individual must show to the satisfaction of the fire marshal that the individual has attended at least six (6) hours of continuing education training meeting the approval of the fire marshal in the areas of certification desired during the two (2) year certification period and pay the applicable certification fees.

68-104-209. The fire marshal, upon application by a certified operator (or equivalent) from another state, may allow the operator to perform displays in this state without submitting to the written examination when the fire marshal determines that the other state's laws allow certified operators from Tennessee to perform displays in that state and the other state's laws set standards for operators substantially equivalent to those in this state. All other applicable certification provisions apply to the out-of-state operator, and applicants for whom the written examination is waived must comply with all other requirements, including continuing education requirements.

68-104-210.

(a) It is unlawful for anyone other than a certified operator to perform an outdoor display using display fireworks, indoor display or proximate pyrotechnics display using 1.4G or 1.4S fireworks or pyrotechnics, as defined by 49 C.F.R. § 173.52, or indoor or outdoor display using flame effects.

(b) It is unlawful for any person or entity to perform an outdoor display using display fireworks, an indoor display or proximate pyrotechnics display using 1.4G or 1.4S fireworks or pyrotechnics, or an indoor or outdoor display using flame effects without an appropriately certified operator on the scene of the display to supervise during the preparation for the display, during the display, and immediately after the display until the site is released.

(c) It is unlawful for any exhibitor or certified operator to conduct or perform an outdoor fireworks display except in accordance with current N.F.P.A. 1123.

(d) It is unlawful for any exhibitor or certified operator to conduct or perform a proximate pyrotechnic display except in accordance with current N.F.P.A. 1126.

(e) It is unlawful for any exhibitor or certified operator to conduct or perform a flame effect display except in accordance with current N.F.P.A. 160.

(f) A violation of subsection (a), subsection (b), subsection (c), subsection (d), or subsection (e) of this section is a Class B misdemeanor.

(g) Notwithstanding any provision of the law to the contrary, any municipality may adopt the provisions of subsections (a) through (e) by reference or substantial duplication as an ordinance violation.

(h) The provisions of subsection (a) through (e) do not apply to individuals or organizations employing 1.4G consumer fireworks (formerly DOT Class C common fireworks), as defined by 49 C.F.R. § 173.52, for their personal or display use.

68-104-211. (Reserved).

68-104-212. The fire marshal shall collect a permit fee from or on behalf of the sponsor for each event at which there will be a display, which may include all or any of the types of displays regulated by this part, in an amount not to exceed fifty dollars (\$50.00) per permit. As part of the application for a permit, the fire marshal shall verify that the required insurance has been obtained and is in force for the event, and shall deny the application if it is not. A permittee, which may include an exhibitor, sponsor, or operator, conducting multiple essentially identical displays at a single location may be issued a multiple display permit. The fire marshal shall set by rule and collect a multiple display permit fee from or on behalf of the sponsor of an event not to exceed four hundred dollars (\$400) per location. A multiple display permit expires one (1) year after issuance.

68-104-213. Any person or entity that stores Class B (1.3) fireworks or pyrotechnical materials, or both, shall store them in accordance with current National Fire Protection Association standards, particularly N.F.P.A. 1124 and any applicable federal, state, and local laws or ordinances. Violation of this section is a Class B misdemeanor.

68-104-214. The fire marshal shall administer and enforce the provisions of this part and may call upon any state, county, or municipal officer or employee for assistance. The fire marshal may promulgate rules to carry out his/her responsibilities under this part, including rules relative to:

- (1) Licensing of exhibitors;
- (2) Certification of operators;
- (3) Training;
- (4) Examinations;
- (5) The responsible handling of display fireworks, proximate displays, and flame effect displays; and
- (6) Any other reasonable rules the fire marshal deems necessary to implement this part.

68-104-215. This part does not affect the validity of any municipal ordinance further regulating or restricting outdoor displays using display fireworks, indoor or proximate pyrotechnics displays, or indoor or outdoor displays using flame effects.

68-104-216. A fireworks advisory council consisting of twelve (12) members is created. The fire marshal shall appoint the members of the advisory council within thirty (30) days after this act becomes law. Members shall serve without compensation. One (1) member shall be a municipal fire chief chosen from a list of nominees submitted by the Tennessee Fire Chiefs Association and one (1) member shall be a local fire marshal. At least one (1) member shall be from the state fire marshal's office. One (1) member shall be an interested citizen. Six (6) members shall be appointed from the consumer fireworks, display fireworks, and proximate pyrotechnics and flame effects industry, one (1) of whom produces twenty (20) or fewer combined fireworks displays, proximate pyrotechnic displays, or flame effect displays a year. One (1) member shall be a senior citizen over sixty-five (65) years of age. One (1) member shall be from a racial minority. The term of a member is two (2) years or until the member's successor is appointed and qualified. The council shall meet at least two (2) times each calendar year. Each year the council shall, on its own, elect a chair who will conduct the meetings of the council. Special meetings may be called at any time by the chair or in writing by any three (3) members. The council shall adopt procedures that govern its proceedings. The council shall assist the fire marshal in developing reasonable policies and regulations that will protect the public safety while promoting efficiency and effectiveness. The council may suggest legislative changes for the same purposes. The fire marshal may remove any member of the council for misconduct, incompetence, nonparticipation, or willful neglect of duty.

SECTION 2. Tennessee Code Annotated, § 68-104-102, is amended by deleting subsection (d) and substituting the following:

(d) The fire marshal shall charge the following fees for permits:

Manufacturer.....	\$1,000
Distributor.....	\$1,000
Retailer.....	\$1,000
Wholesaler	\$1,000
Seasonal retailer.....	\$100
Exhibitor.....	\$1000

A person engaged in more than one (1) of the above activities shall pay only one (1) fee based upon the classification requiring the higher fee.

SECTION 3. Tennessee Code Annotated, Section 68-104-101, is amended in subdivision (a)(1) by changing the semicolon at the end of the subdivision to a period and adding the following:

The word “distributor” also includes any person engaged in the business of making sales of display fireworks as defined in §68-104-202 or proximate pyrotechnics or flame effect materials to licensed exhibitors for the purpose of providing fireworks, pyrotechnic, or flame effect display services in this state. A distributor may sell display fireworks, proximate pyrotechnics, or flame effect materials only to holders of a Tennessee exhibitor’s permit. An out-of-state distributor will not be required to obtain a Tennessee permit when selling exclusively to a holder of a Tennessee manufacturer’s, distributor’s, wholesalers, or exhibitor’s permit;

SECTION 4. Tennessee Code annotated, Section 68-104-107, is amended in subsection (a) by deleting the first two (2) sentences of the subsection and substituting the following:

Items of fireworks that are to be used for public display only and that are otherwise prohibited for sale or use within this state include display shells

designed to be fired from mortars and display set pieces of 1.3G fireworks (formerly D.O.T. Class B), as defined by 49 C.F.R. § 173.52.

SECTION 5. The Tennessee Code Commission is requested to move current Section 68-104-107, as amended, from its current location and codify it as Section 68-104-211 in the new part created by this act.

SECTION 6. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

SECTION 7. Tennessee Code Annotated, Section 4-29-230(a), is amended by adding the following as a new subdivision:

() Fireworks advisory council, created by § 68-104-216.

SECTION 8. This act shall take effect upon becoming a law for the purposes of promulgating rules, conducting necessary examinations, and issuing licenses and certificates, and making appointments to the advisory council. Provisions requiring exhibitors to be licensed and operators to be certified take effect on May 1, 2007.

Licenses and certificates issued before May 1, 2007, shall have that as an issuance date and an exhibitor's license issued on or before May 1, 2007, will expire unless renewed on April 30, 2007, and an operator's certificate issued on or before May 1, 2007, will expire unless renewed on April 30, 2009.